

HIGH COURT OF UTTARANCHAL AT NAINITAL.

(Chapter VIII Rule 32 (2) (b)
Description of the Case

Writ Petition No. 78 of 2003 (S/B)

Date of Decision : 25th August, 2006

A.F.R. (Approved for reporting)

~~Not approved for reporting.~~

Date : 25.08.2006

Initial of Judge.

Note: Bench Reader will attach this at the top of first page of the judgment when it is put up before the Judge for signature.

HIGH COURT OF UTTARANCHAL, AT NAINITAL

Writ Petition, No. 78 of 2003 (S/B)

1. M.T. Khan S/o late Shri A.T. Khan
Senior Research Assistant, Group-I
 2. P.C. Upadhyay
S/o late Shri L.D. Upadhyay
Senior Research Assistant, Group-I
 3. Suresh Chandra S/o Shri Dharam Singh
Mechanic, Group-II
 4. Surendra Singh Bisht
S/o late Shri Sher Singh
Mushroom Production Assistant, Group-III
 5. Ganeshi Lal S/o Shri Lachchi Ram
Mushroom Production Assistant, Group-III
 6. Jagdish Chandra Bhatt
S/o Shri G.D. Bhatt
Lab Assistant
All working in Indo-Dutch Mushroom Project
Horticulture Department, Jyolikot
District Nainital
- Petitioners

Versus

1. State of Uttaranchal through
Secretary, Horticulture Department
Uttaranchal, Dehradun
 2. Director
Horticulture & Food Processing
Uttaranchal, Udyan Bhawan, Chaubatia
Ranikhet, District Almora
- Respondents

Delivery of Judgment :- 25th August, 2006

Mr. Rajendra Dobhal learned counsel for the petitioners.
Mr. N.C. Gupta learned Standing Counsel for the respondents.

Coram: **Hon'ble Rajeev Gupta, C.J.**
Hon'ble J.C.S. Rawat, J.

Per:- Hon'ble J.C.S. Rawat , J.

1. This writ petition under section 226 of the Constitution of India has been filed by the petitioners with the following prayers:-

- (i) to issue a writ, order or direction in the nature of certiorari calling for the

records and quashing the impugned order dated 17.01.2003 (Annexure-1 to this writ petition) passed by the respondent No. 2-Director, Horticulture & Food Processing, Almora.

- (ii) pass any other and further order as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.
- (iii) Award the cost of the writ petition to the petitioners.

2. It is admitted to the parties to the writ petition that petitioner no.1 & 2 M.T. Khan and P.C. Upadhyay have been working as Senior Research Assistant, Group-I since July 1984 and August 1995 respectively in Indo-Dutch Mushroom Project, Horticulture Department, Jyolikot, District Nainital. The petitioner No.3-Suresh Chandra has been working as Mechanic Group-II in the aforesaid Project of Horticulture Department. The petitioner No. 4 & 5 Surendra Singh Bisht and Ganeshi Lal have been working as Mushroom Production Assistant Grade-III in the Project. The petitioner No.6-Jagdish Chandra Bhatt is working as Lab Assistant since November 1993 in the said Project. While discharging their duties, the petitioners have supplied the compost to the mushroom growers. The mushroom growers made complaints to the authorities that the compost supplied under the B.P.L. Scheme in August 2002 was of sub-standard and due to which they did not receive good results upto their expectation and they suffered heavy financial losses. On the basis of the complaints from the mushroom growers, the Chief Development Officer constituted a committee to inquire into the

matter. The committee consisting of Dr. G.S. Mer, Project Scientist, Mushroom Centre Bhawali, K.M.V.N., Nainital and Mr. R.S Adhikari, Project Economist, District Rural Development Officer, Nainital has submitted its report on 28.11.2002. It was mentioned inter-alia in the inquiry report that the compost supplied to the mushroom growers was sub-standard, due to which the mushroom growers suffered a heavy pecuniary losses and the petitioners were responsible for the same. The Committee has found the petitioners guilty of supplying the sub-standard compost to the mushroom growers. Due to the negligence and lapses on the part of the petitioners, the mushroom growers have suffered the financial loss and due to this the image of the department as well as the State Government has been tarnished.

3. On the basis of recommendations of the committee's report, the respondent No. 2 has passed the impugned order dated 17.01.2003 directing the recovery of the amount of financial loss suffered by the mushroom growers from the petitioners. Feeling aggrieved by this, the petitioners have filed the writ petition before this Court.

4. It was contended on behalf of the petitioners that the respondent no.2 has passed the impugned order without giving an opportunity of hearing or show cause notice to the petitioners and as such the impugned order is in violation of principle of natural justice. It was further contended that the respondent no.2 has not complied with the provision of Rule 10(2) of U.P. Government Service (Discipline & Appeal) Rules 1999 {applicable to the State of Uttaranchal}. Rule 10(2) provides that an explanation is required from the government servant against whom the minor

punishment is awarded under Rule 3 U.P. Government Service (Discipline & Appeal) Rules 1999 and the same is to be considered before passing the order. Learned Standing Counsel has submitted that the impugned order has been passed after making thorough inquiry by the Committee and on the recommendations of the Chief Development Officer, Nainital. The action of recovery against the petitioners was made in the public interest and to avoid the repetition of such lapses and negligence in future. It was further submitted that the petitioners were found guilty and responsible for supplying the sub-standard compost to the mushroom growers. Perusal of the record reveals that the petitioners had made specific averments in para 12 & 13 of the petition that they have not been given an opportunity of hearing or show cause as provided under Rule 10(2) of the U.P. Government Service (Discipline & Appeal) Rules 1999. The said averment is unrebutted in the counter affidavit filed by the respondent no. 2. Perusal of the record reveals that the impugned order has been passed in view of the inquiry report submitted by the Committee and on the recommendations of the Chief Development Officer, Nainital. Rule 10 (2) U.P. Government Servant (Discipline and Appeal) Rules 1999 provides as under:-

“10. Procedure for imposing minor penalties

(1)

(2) The Government Servant shall be informed of the substance of the imputations against him and called upon to submit his explanation within a reasonable time. The Disciplinary Authority shall, after considering the said explanation, if any, and the relevant records, pass such order as he considers proper and where a penalty is imposed, reason thereof shall be given. The order shall be communicated to the concerned Government Servant.”

5. Rule 10(2) provides when a minor punishment is to be awarded an explanation is required from the erring government servant. Rule 3 of the U.P. Government Servant (Discipline and Appeal) Rules 1999 deals with the punishment:-

“3. Penalties. – The following penalties may, for good and sufficient reasons and as hereinafter provided, be imposed upon the Government Servants:

Minor Penalties :-

(i)

(ii).....

(iii).....

(iv) Recovery from the pay of the whole or part of any pecuniary loss caused to Government by negligence or breach of orders;

(v).....”

6. Perusal of the aforesaid Rule reveals that the recovery of any amount from the salary of a government servant is a minor punishment. The respondent no.2 has not specifically stated in the counter affidavit that the explanation was called from the petitioners and after considering the explanation the impugned order was passed. It is also revealed that there was no averment in the impugned order itself that the explanation was sought from the delinquent officials/officers and after due consideration of their explanation the minor punishment was awarded. It is amply proved that no opportunity of hearing was given to the petitioners before awarding the minor punishment vide impugned order dated 17.01.2003. Therefore, the impugned order is in violation of Rule 10(2) of the U.P. Government Service (Discipline & Appeal) Rules 1999.

7. A writ petition No. 66(S/B) of 2003 L.K. Pant Vs. State of Uttaranchal & other has been filed before the Division Bench of this Court challenging the similar

impugned order dated 17.01.2003. The Division Bench of this Court has held that no explanation was called for from the petitioner-L.K. Pant and the impugned order was passed in violation of Rule 10(2) of the U.P. Government Service (Discipline & Appeal) Rules 1999 and the impugned order was set aside. It is revealed that the petitioner-L.K. Pant was also one of the officials involved in the matter against whom the present impugned order had been passed.

8. In view of the foregoing discussion, we are of the considered view that the petitioners should have been called upon to submit their explanations within a reasonable time. But, the respondent no.2 has passed the impugned order without giving any explanation or show cause to the petitioners and as such the impugned order is bad in the eyes of law. As such, the impugned order is liable to be quashed.

9. The impugned order dated 17.01.2003 passed by the respondent No.2-Director, Horticulture & Food Processing, Almora is set aside on the ground that the opportunity of hearing has not been given to the petitioners. However, it is made clear that the respondent no.2 would not be precluded by the quashment of the impugned order to proceed against the petitioners in accordance with Rules.

10. The petition is allowed accordingly. Parties shall bear their own costs.

(J.C.S.Rawat, J.) (Rajeev Gupta, C.J.)

Dated 25.08.2006

LSR